

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the matter of)

Implementation of Sections)
3(n) and 332 of the)
Communications Act)

Regulatory Treatment of)
Mobile Services)

GN Docket No. 93-252

COMMENTS

Cox Enterprises, Inc. ("Cox"), by its attorneys, hereby files comments on the Commission's Notice of Proposed Rulemaking on regulatory treatment of Commercial Mobile Services ("CMS") providers.^{1/} This proceeding is prompted by the recent passage of a provision of the Omnibus Budget Reconciliation Act (the "Reconciliation") which provided for a comprehensive reexamination of the regulatory status and federal - state jurisdiction over commercial mobile service provider offerings.^{2/}

I. INTRODUCTION

Cox was an early and persistent advocate of cable-based Personal Communications Services ("PCS"). Cox was the first company with cable television operations to file applications with the Commission proposing to test PCS utilizing the broadband characteristics of the cable television infrastructure. Cox was the first

1/ Implementation of Sections 3(n) and 332 of the Communications Act, FCC 93-454, released October 8, 1993 ("Notice").

2/ Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993).

company to demonstrate the technical feasibility of cable-based PCS. Throughout its initial and renewed experimental license period Cox has continued to develop the potential of PCS to provide a full range of digital voice and data services.

Cox's interest in the Notice derives from its interest in the development of PCS as an affordable, attractive consumer alternative to the current monopoly landline local exchange. While the Notice does not deal extensively with landline interconnection rates, terms and conditions for CMS, Cox believes that failure to examine landline interconnection issues comprehensively at the outset could marginalize PCS as a full service substitute to the local exchange carrier ("LEC") monopoly just as cellular has been marginalized. As discussed below, Cox believes that the Reconciliation provides the Commission with a fresh opportunity to reexamine the efficacy of its regulation of landline interconnection to CMS providers and to establish fair, reasonable and cost based landline interconnection requirements for PCS and all CMS.

II. COMMISSION AUTHORITY OVER CMS INTERCONNECTION

A. Cost Based Interconnection is a Fundamental Requirement.

The Notice reviews current cellular interconnection policies and requests comment on their extension to all commercial mobile services providers.^{3/} As the Commission is aware, despite its best efforts in declaring cellular carriers as co-carriers in the local exchange and directing LECs to negotiate in good faith for fair

3/ Notice at ¶¶70-71. Cox supports the Commission's tentative conclusion that it should preempt state regulation of the right to intrastate interconnection and the right to specify the type of interconnection.

and reasonable interconnection, cellular carriers have been unable to achieve co-carrier status and have not received the co-carrier compensation from LECs that the Commission's policies plainly require. Accordingly, extension of the cellular status quo to all CMS would be inadequate to ensure that LECs provide cost based interconnection in a manner that permits radio based local competition to develop.

The Notice also cites the PCS Notice interconnection proposal that would require LECs to make interconnection available to PCS providers on terms no less favorable than those offered to other customers or carriers.^{4/} As Cox observed in its Comments on the PCS Notice, while adoption of this standard would be a step forward, it falls far short of the comprehensive reform necessary for landline interconnection.^{5/} Under this policy, PCS providers will be entirely dependent upon LEC willingness to develop and provide new services and functions to its competitor.^{6/}

As LEC networks become more sophisticated and complex in their basic, enhanced and advanced intelligent network offerings, it is critical that the Commission look beyond the LEC provision of mere physical interconnection to CMS providers and discern the need for fully unbundled LEC network functionalities. In the absence of this basic requirement, the development of new

4/ Notice at ¶73, citing PCS Notice, 7 FCC Rcd 5676, 5714-16 (1992).

5/ See Cox Comments, November 4, 1992 at 23-26; Cox Reply Comments January 8, 1993 at 27-28.

6/ Obviously the Commission appreciates the difficulty other networks may experience with LEC cooperation in new services development. The Commission's Intelligent Network proceeding was initiated in part to respond to this concern.

and innovative service arrangements by CMS providers increasingly will be stymied by failure to include LEC databases and other LEC network capabilities within the scope of LEC interconnection offerings. Several other factors will also be essential. For example, there must be no restriction on resale or reuse of LEC services provided to CMS providers. Also, there must be uniform advance notification of changes to LEC networks affecting interconnection technical changes and informing all parties of the availability of new service functions and non-discriminatory access to LEC network databases. Finally, each unbundled LEC network element must reflect the cost of providing the function without overhead loadings or unsubstantiated "contribution" charges.^{7/}

Cox submits that the Commission should not merely accede to the status quo as it considers the scope of CMS interconnection rights and LEC interconnection obligations. The Commission need look no further than the results to date of its Expanded Interconnection proceedings and its Open Network Architecture policy to see that continuing, aggressive federal leadership is an absolute minimum requirement for the realization of the Commission's competition policies. CMS interconnection deserves the same concerted level of attention as these other critical Commission policies.

^{7/} Cox has observed in other contexts that LECs often price interconnection services to competitors at fully distributed cost rates, while LECs price their own services to consumers in competitive markets at incremental cost rates. See Cox Petition to Deny at 21 filed July 30, 1993 and Reply at 3 filed August 24, 1993, FCC File No. W-P-C 6868, U S West Communications, Inc. Omaha Video Dialtone Application. The Commission cannot avoid addressing this basic inequity in the interconnection arena.

B. Submission of Interconnection Tariffs

The Notice proposes preemption of state entry and rate regulation for the providers of commercial mobile services and private mobile services. Cox concurs that the Reconciliation intended Commission preemption of these activities. However, Cox submits that the legislation permits the Commission to take stronger measures to ensure that interconnection rates and terms are fair. The Commission's assertion of authority over interconnection rates and terms by requiring the filing of LEC interconnection tariffs as proposed in the Notice would be a positive initial step.^{8/}

The trend towards regionalization of cellular, SMR and paging operations is obvious. It was at least in part one of the reasons the Commission determined to license some PCS markets utilizing Major Trading Areas ("MTAs") to assure that PCS operators could compete with other wide area mobile service providers. Review of the MTA markets reveals that few are not interstate markets that in many cases cover large portions of several states. Given the overwhelmingly interstate nature of these markets, Cox submits that the Commission should require the submission of LEC interstate CMS interconnection tariffs.

Additionally, in order that the Commission, CMS providers and the public can more readily ascertain the full scope of applicable interconnection charges and service conditions, the Commission should require the concurrent submission and maintenance of relevant information, including state interconnection tariffs and

^{8/} Notice at ¶ 74.

contracts for non-tariffed but ancillary services such as billing and collection, that are formulated on the intrastate level and applied to purely intrastate and local service. Such a requirement would assist in ensuring that there is no discrimination and that intrastate interconnection rates are not frustrating federal interconnection policies.^{9/}

C. Regulation of LEC CMS Affiliates

The Notice requests comment on the need for additional competitive safeguards imposed on the CMS affiliates of dominant local exchange carriers.^{10/} Cox submits that separate subsidiaries for all LEC CMS activities are essential to minimize opportunities for cross-subsidization and discriminatory behavior. With PCS and other CMS presenting the first credible hint of potential widespread competition to the LEC landline network, the Commission will have abdicated its responsibility if it fails to enact effective cost accounting, separate subsidiary, cross-subsidy and non-discrimination requirements. By relying solely on existing joint cost accounting rules to prevent cross-subsidy and on LEC goodwill to prevent discrimination, the Commission will have placed the future of this competitive market in the hands of those most obviously interested in preserving landline monopolies.

While the Commission may be reluctant to take steps that would require greater oversight of LEC affiliate transactions, Cox believes that there are alternative

^{9/} In the context of the Commission's Open Network Architecture implementation, for example, the Commission required the LECs to report the filing of state ONA tariffs and in turn the Commission made this information available in its daily tariffing releases.

^{10/} Notice at ¶64.

methods for regulatory oversight and enforcement that will not unduly burden the Commission but will substantially assist CMS providers in achieving fair and reasonable interconnection arrangements. Specifically, all LEC CMS licenses should be expressly conditioned so that failure to abide by established Commission interconnection policies and regulation will result in revocation of the LEC's CMS license.^{11/}

III. APPLICATION OF TITLE II TO COMMERCIAL MOBILE SERVICES

The Notice requests comment on the market conditions surrounding the provision of commercial mobile services. Cox supports the Notice's general conclusion that market conditions for CMS justify forbearance from many Title II regulations and requirements.

Cellular, ESMR and SMR are already broadly available from competing sources and the Commission's recent decision to issue up to seven PCS licenses in each market will add significantly to the number of mobile competitors in each market across the country. Given the number of CMS providers that are or shortly will be present in each market, tariffing and other regulation of CMS operators is not necessary to protect the public against unjust or unreasonable charges and practices. As the Notice aptly observes, the Commission's formal complaint process

^{11/} The Commission's cellular license renewal policies require licensees to remain in substantial compliance with Commission rules and policies throughout the license term. See Cellular License Renewals, 7 FCC Rcd 719 (1991). Cox suggests that this compliance condition be applied even more directly by attaching a condition on LEC affiliate CMS licensees. The threat of losing a license for failure to abide by Commission policies may have a substantial beneficial effect on LEC interconnection behavior.

will be available to redress any abusive practices that may develop and the Commission is free to revisit its forbearance determinations as changes in market conditions warrant.^{12/}

As discussed above, based upon the LEC monopoly control of the landline local exchange, and total CMS provider dependence upon LECs for interconnection, Cox urges the Commission to apply additional competitive safeguards on LEC CMS affiliates. At a minimum, structural separation between LEC landline and all CMS affiliates must be prescribed in the absence of effective competition in the core landline LEC markets. Structural separation should be a basic precondition to LEC participation in the mobile marketplace.^{13/}

The Notice also requests comment on the desirability of extending the MFJ's interexchange "equal access" requirements to non-BOC commercial mobile services providers.^{14/} For the same reasons that forbearance of Title II tariff and rate regulation for CMS providers is warranted, no public purpose is served by the

^{12/} Notice at ¶62.

^{13/} While structural separation and interconnection tariff filing requirements make detection of anti-competitive cross-subsidies and discrimination more easily identifiable, Cox notes that the requirement of structural separation and tariff filing in the absence of any examination of the actual rates charged to CMS competitors will prove an insufficient competitive protection.

^{14/} Notice at ¶71. Equal access provisions are currently imposed on all BOC affiliated wireless providers as part of the Modification of Final Judgment.

extension of an equal access requirement to CMS carriers that have no local exchange bottleneck that they can leverage to disadvantage competitors.^{15/}

The application of an interexchange equal access requirement is in fact far more complicated than the Notice suggests. First, not all CMS providers will have similar or even reasonably uniform local calling areas to which an equal access requirement could be applied.^{16/} CMS customers will have many choices for interexchange services and service providers. If a market develops for equal access type services, CMS providers will certainly provide their customers with this option. There is simply no reason to extend an obligation that is entirely based on the anticompetitive synergy of a local exchange bottleneck onto non-BOC CMS providers.

IV. CONCLUSION

The Notice is a tentative first step on the road to establishing CMS as a pro-competitive market force. The Commission should take the additional steps Cox has


^{15/} The origin of this question is a petition for rulemaking filed by MCI seeking the extension of equal access to all cellular and PCS service providers. See MCI Petition, Policies and Rules Pertaining to Equal Access Obligations of Cellular Licensees, RM No. 8012, filed June 2, 1992. While it perhaps is in MCI's individual interest to impose equal access implementation costs on non-BOC CMS providers, there is no public interest reason articulated for this result.

^{16/} CMS markets may range from nationwide, supra-regional, MTAs, BTAs, MSAs/RSAs, to metropolitan areas and campus environments.

outlined herein to fully implement its interconnection authority under revised Section 332 of the Communications Act.

Respectfully Submitted,

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